IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

WP(C).No. 5915 of 2007(C)

OS.82/2006 of III ADDL.SUB COURT, KOZHIKODE
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PETITIONER:

MEEZAN REALTORS (P) LTD.,
2ND LEVEL, GALLERIA TRADE CENTRE, MAVOOR ROAD,
KOZHIKODE, REPRESENTED BY ITS MANAGING DIRECTOR,
A. ABDULLA, S/O. KUNHAMMED, KUNNAKKAD HOUSE,
OORAKAM MELMURI, TIRURANGADI TALUK,MALAPPURAM DIST

BY ADV. SRI.T.KRISHNAN UNNI

RESPONDENTS:

U.K. MOHANARAJ, S/O. LATE U.K.APPU,
BUSINESSMAN, ULLATTIL HOUSE, U.K.S. ROAD,
KALATHINKUNNU AMSOM AND DESOM, KOZHIKODE TALUK,
KOZHIKODE.

BY ADV. SRI.C.P.MOHAMMED NIAS
SMT.P.K.SHAKKEELA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 5915/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE PLAINT IN OS NO. 82/2006 ON THE FILE OF THE COURT OF THE SUB JUDGE OF THE CALICUT DT. 28/2/06.

EXT.P2. COPY OF THE AFFIDAVIT IN SUPPORT OF IA NO. 1059./06 IN OS NO. 82/06, SUB COURT, CALICUT DT. MARCH,2 006.

EXT.P3. COPY OF THE IA NO. 5620/06 IN OS NO. 82/06, SUB COURT, CALICUT DT. 16/11/06.

EXT.P4. COPY OF THE ORDER OF THE COURT OF THE SUB COURT, CALICUT IN IA NO. 1059/06 AND IA NO. 5620/06 IN OS NO. 82/06 DT. 20/11/06.

RESPONDENT'S EXHIBITS **NIL.**

True copy

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M.N.KRISHNAN, J

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W.P.(C) No.5915 OF 2007

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Dated this the 9th day of August 2007

JUDGMENT

This writ petition is filed to set aside the common order passed in I.A.Nos.1059 & 5620 of 2006 in O.S.No.82 of 2006. The petitions are one for the issuance of a Commission and the other for the assistance of a town surveyor for properly identifying and demarcating the property. The suit is one for specific performance of a contract of the property described in the plaint schedule. In the Commission application, the followings facts are to be noted by the Commissioner:(1) the presence of the culverts at its age, location, etc., (2) the presence of drainage and its location and its age at different locations, (3) the nature and location of the property and (4) the actual extent of the property with plan showing measurements in triangular plots. In the other I.A. in order to effectively do the work mentioned above, the Assistant Town Surveyor to identify the same.

2. The Commissioner, who was appointed at the time of institution of the suit submitted a report to the effect that for a proper identification of the property, the assistance of Surveyor is necessary and it was for noting other

additional particulars a Commission application was filed by the parties. Learned counsel for the writ petitioner has taken me through the order passed by the learned Sub Judge. I am afraid the learned Sub Judge has misdirected himself in finding out so many things which should not have been the subject matter for consideration at the stage of consideration of a Commission application. When large extent of property is involved and admittedly there is confusion regarding the identity of the property, it is necessary that for an ultimate result, a proper idea about the correct identity of the property is necessary. It may be also necessary to fix the correct price since the property is agreed to be sold on the basis of valuation per cent. Whether it is a Government land or puramboke land need not detain one's attention at the time of granting the prayer for issuance of a commission. By deputing a surveyor actually, it will help the court to find out whether it is a puramboke land or not.

3. I do not want to discuss elaborately on the matters. But I find there is some force in the contention of the plaintiff that the commission's report has to be remitted back to the same Commissioner with the assistance of a Town Surveyor for noting all the particulars as required in the application. Therefore the order passed by the learned Sub Judge is set aside and I.A.Nos.1059 & 5620 of 2006 are allowed and he is directed to remit the

Commissioner's report to the same Commissioner, if she is available to identify the property with the assistance of a Town Surveyor and also to report on the matters that are sought to be looked into by the parties. In order to make it more convenient for the Commissioner, both the parties be directed to file a work memo before the Commissioner so that she can make a complete noting of facts as required by the parties.

Writ petition is allowed as above.

M.N.KRISHNAN, JUDGE

Cdp/-